

ORIGINAL

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0354

STATE OF MONTANA,

Plaintiff and Appellee,

v.

DANNY SARTAIN,

Defendant and Appellant.

FILED

OCT 30 2009

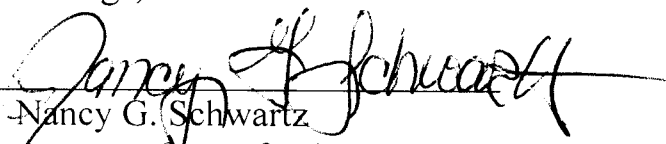
Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA**MOTION FOR EXTENSION OF TIME
AND AFFIDAVIT IN SUPPORT**

COMES NOW, Nancy G. Schwartz, counsel of record for Defendant and Appellant, and respectfully requests an extension of time until December 5, 2009, in which to prepare, file and serve Appellant's opening brief in the above-entitled matter. In support of this motion, undersigned counsel respectfully submits the following affidavit.

Respectfully submitted this 29th day of October, 2009.

N.G. SCHWARTZ LAW, PLLC
303 North Broadway, Ste. 600
Billings, MT 59101

By:


Nancy G. Schwartz
Attorney for Defendant/Appellant

STATE OF MONTANA)
 : ss
County of Yellowstone)

I, Nancy G. Schwartz, being first duly sworn upon my oath, depose and state as follows:

1. I am a licensed, practicing attorney in the State of Montana, and am assigned cases as contract counsel by the Office of the State Public Defender, Appellate Defender Office.

2. In this capacity, I was assigned to represent the Appellant in the above-entitled matter and a Notice of Appearance was filed on my behalf on October 1, 2009.

3. The issues presented on appeal in Mr. Sartain's case are complex. Mr. Sartain was convicted following a two day jury trial, and Mr. Sartain has provided the undersigned and his previous counsel with numerous issues to research and consider prior to filing an opening brief.

4. Prior to my appointment to represent Mr. Sartain, appellant's counsel requested and was granted at least two prior extensions. The brief is presently due on November 5, 2009.

5. I cannot meet the present deadline for filing Appellant's opening brief. Given my recent appointment, and due to the complexity of the case, additional time is necessary to properly research and brief the issues

presented. I am also currently working to complete the opening brief in No. DA 09-0252, which is also a case of complex nature.

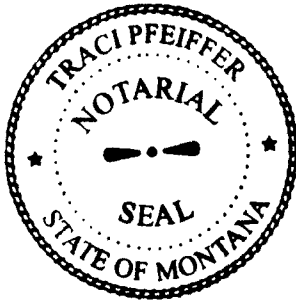
6. Mr. Sartain is presently incarcerated following his conviction in this matter.

7. I will continue to work diligently to complete the opening brief within the time requested.

8. Opposing counsel has been contacted concerning this motion and does not object.

9. Further your affiant sayeth naught.

SUBSRIBED AND SWORN to before me this 29th day of October, 2009.



Traci Pfeiffer
Traci Pfeiffer

Notary Public for the State of Montana
Residing at Billings, MT
My commission expires: April 19, 2012

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing
Motion for Extension of Time and Affidavit in Support to be mailed to:

STEVE BULLOCK
Montana Attorney General
MARK MATTIOLI
Assistant Attorney General
P.O. Box 59620-1401

MARTY LAMBERT
GALLATIN COUNTY ATTORNEY
1709 W. COLLEGE
BOZEMAN, MT 59715

DANNY SARTAIN 2009296
MONTANA STATE PRISON
700 CONLEY LAKE
DEER LODGE, MT 59722

Dated: Oct 29 2009 